

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GENE RAYMOND MATTHEWS, III

Plaintiff,

v.

S. RAMOSS, et al.

Defendants.

No. 1:22-cv-01508-JLT-SAB (PC)

ORDER DENYING PLAINTIFF'S SECOND
MOTION FOR APPOINTMENT OF
COUNSEL, WITHOUT PREJUDICE

(ECF No. 32)

Plaintiff is proceeding pro se and in forma pauperis in this action filed pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff's second motion for appointment of counsel, filed August 23, 2023.

There is no constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the Court cannot require any attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the Court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

Without a reasonable method of securing and compensating counsel, the Court will seek volunteer counsel only in the most serious and exceptional cases. In determining whether "exceptional circumstances exist, the district court must evaluate both the likelihood of success on

1 the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity
2 of the legal issues involved.” Id. (internal quotation marks and citations omitted).

3 In the present case, the Court does not find the required exceptional circumstances. Even
4 if it assumed that Plaintiff is not well versed in the law and that he has made serious allegations
5 which, if proved, would entitle him to relief, his case is not exceptional. The Court is faced with
6 similar cases almost daily. Plaintiff is in no different position than any other pro se litigation.
7 While the Court recognizes that Plaintiff is at a disadvantage due to his pro se status and his
8 incarceration, the test is not whether Plaintiff would benefit from the appointment of counsel. See
9 Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986) (“Most actions require development
10 of further facts during litigation and a pro se litigant will seldom be in a position to investigate
11 easily the facts necessary to support the case.”) The test is whether exception circumstances exist
12 and here, they do not. At this stage of the litigation, the Court cannot find Plaintiff is likely to
13 succeed on the merits as the scheduling order issued on May 12, 2023. complaint. In addition,
14 circumstances common to most prisoners, such as lack of legal education and limited law library
15 access, do not establish exceptional circumstances that would warrant a request for voluntary
16 assistance of counsel. Accordingly, Plaintiff’s second motion for the appointment of counsel is
17 denied, without prejudice.

18 IT IS SO ORDERED.

19 Dated: August 24, 2023

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21 UNITED STATES MAGISTRATE JUDGE
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